



Milan, 2012 February 13

ESMA
European Securities and
Market Authority
103 Rue de Grenelle
75007 Paris

Ref. N. 116/12

Reply to ESMA's consultation on draft technical standards on the Regulation (EU) xxxx/2012 of the European Parliament and of the Council on short selling and certain aspects of credit default swaps.

Assogestioni is grateful for the opportunity to comment on ESMA's consultation on draft technical standards on the Regulation on short selling and certain aspects of credit default swaps.

Here below Assogestioni replies to the consultation documents.

In general, we agree with the draft technical standard and related issues discussed in the consultation, but we have few considerations on some specific questions.

In particular, we support a homogeneous definition across legislations of the rules for short selling and certain aspects of credit default swaps to ensure greater coordination and consistency between Member States. Further, we agree with the approach of explaining in detail the agreements, arrangements and measures to adequately ensure availability for settlement pursuant to article 12 and 13 of the Regulation. We welcome also with favor the proposal of having only one standard form for the purpose for notifying to relevant competent authority or public short positions, in order to minimize cost of implementation of this Regulation.

Q4: Do you agree with the proposed list of third parties which may be parties to the arrangements or measures and the criteria proposed by ESMA that they should fulfill?

In general we agree, but it is not clear if an investment company that managed funds could be considered as "a third party".

Q9 In relation to the approach suggested for liquid shares, do you consider it appropriate to use the MiFID definition of liquid shares? Do you think ESMA should consider different approaches to determine the reasonable expectation



test for liquid and illiquid shares? If not, can you provide indications as to the criteria to consider to de-fine liquid shares or to take into account the liquidity of the shares in these circum-stances? Is securities lending activity an additional factor to consider when determining liquidity of a share?

We agree with the approach suggested for liquid share, and more in general, with the support of an homogeneous definition across legislations over short selling, MiFID and others.

Q13: Do you agree with the proposed way to identify natural and legal persons, including the contact information details?

We agree with the proposal, but, without prejudice to forthcoming consultation papers, we suggest providing additional guidance on the information to be given in the notification form for an investment company that has to notify the Authority about different net short positions on the same equity issuers. It could be possible that an investment company should make more than one notification on the same equity issuers when these are the results from each individual decision-making center (where is confirmed the orientation expressed in the CESR Guidelines 10/453); for example when an investment company manages a fund and discretionary portfolio mandate or different funds. We ask to clarify if in these situations it could be possible to integrate the field identifier "*position holder: full name [...]*" with an indication, for example, of the name of the fund or with a generic reference or these positions should be managed with the field identifier "*comment*".

It should also be clarified how these circumstances should be managed when different short positions on the same equity issuers, coming from the same investment companies, are to be disclosed to the public.

Q15: Do you have any comments on the proposed way to identify the issuer in relation to which the relevant net short position is held, including how to use the ISIN code in this matter?

Regard the ISIN code that is proposed to be used to identify the issuer, we prefer not to use the ISIN code of the share class first admitted to trading. We support indeed the use of an alternative one as of the concept of "the main class". We consider that the ISIN code of the share class first admitted to trading could be unknown. Where this information should be used, we suggest integrating the MiFID database providing also this attribute to facilitate the fulfilling of the notification form between Member States.

In order to identify the sovereign issuers, we suggest integrating the notification form with a specific field identifier that indicates a specific code for each type of sovereign issuers, as defined in art. 2(1)(i) of Regulation. The notification of this information would allow the investment companies and the notified competent authority to conduct simple checks on the accuracy of the calculation of the position, avoiding possible confusion stemming from the use of the simple name of the issuers.

Lastly, we suggest including in the table 1 of Annex 1 (the list of field for notification purpose) also the field identifier "*Cancellation date*".



Q17: Do you agree that the additional information as described above should be provided?

We agree, but without prejudice to forthcoming consultation papers, we suggest providing a definition of the field "*Position holder*" and "*Reporting person*". We suggest to clarify the information to be provided in the notification scheme in order to better highlight, where it is possible, the distinction between who is obliged to make the notification (person considered to own a financial instrument for the purposes of the definition of short sale), from the third party submitting the notification on position holder's behalf and from the "real" owner of the securities; in particular, where is confirmed the orientation expressed in the CESR Guidelines 10/453, in the case of non-discretionary portfolio management, the positions could be calculated at the level of each customer, which will also be responsible for any communications.

Q19: Do you agree that information on the central websites should at least include data as provided in Annex 1 of the draft implementing standard presented in appendix to this consultation paper?

We agree, but also please refer to answer of Q. 13.

We suggest emending art. 2 (b) to avoid the wrong interpretation that the information on net short positions in shares should be disclosed to the public and posted on a central website only when it exceeds the relevant publication threshold. Indeed the notification should be made also when the position reaches or falls below a relevant publication threshold.

Article 2 Means by which information may be disclosed to the public

[...]

b. allowing users to identify and sort out the net short positions in a share published on the web site that, at the time of accessing the web site, ~~exceed~~ reach or fall below the relevant publication threshold;

The Director General